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**Backpay Payments**

Report No. OIG-AMR-79-17-01

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Memorandum from the Associate to the General Counsel, Division of Operations-Management, Backpay Payments, Report No. OIG-AMR-79-XX-XX, dated May 11, 2017

## **EXECUTIVE SUMMARY**

The audit was initiated after the Office of Inspector General initiated an investigation of an alleged improper backpay disbursement in a particular Region. The audit objective was to determine whether the Agency disbursed, through an electronic funds transfer, payments from the U.S. Department of Treasury account to any individuals who were not discriminatees in the case for which the backpay was collected. Backpay disbursements by the Region involved in the investigation of backpay were not included in our review.

With the exception of returning backpay funds to respondents, our testing did not disclose any instance that the Agency disbursed, through an electronic funds transfer, payments from the U.S. Department of Treasury account to any individuals who were not discriminatees.

We observed that the Backpay system did not maintain records of changes to database information. Based upon that observation, we determined that the payee bank account information in the Backpay database was not reliable. Our testing to compensate for the lack of database reliability did not disclose any disbursement of backpay to individuals that were not discriminatees or respondents. We verified that, as a result of implementation of what management characterized as a new system, a historical record of the payee data for each backpay disbursement is now maintained. We therefore did not include a recommendation for corrective action.

We also observed various discrepancies in the backpay process. Rather than making recommendations to address the discrepancies, we determined that it is appropriate to initiate an audit to review the internal controls in the Backpay process.

In response to the draft report, management commented that it was pleased that the report did not identify any discrepancies that could be an indicator of fraud; that the report should clarify that the Backpay System that was audited is not the current Backpay Management System; and that report should state that the majority of the deficiencies discovered during the audit have been addressed in the design and functionality of the Backpay Management System. The comments are included in their entirety as an appendix to the report.

Although the draft report stated that management implemented changes to the Backpay system that remedied the data reliability finding, we added language to the final report to clarify that the Office of the Chief Information Officer did so through the implementation of a new "Backpay Management System." With regard to management's statement that the new system's design and

functionality have remedied the majority of the deficiencies discovered during the audit, we are concerned that management is mischaracterizing the audit report. To address that concern, language was added to the Backpay Discrepancies section of the final report to clarify that the deficiencies described therein would not result from the failures of an information technology system.

## **BACKGROUND**

The National Labor Relations Board (NLRB or Agency) is authorized by the National Labor Relations Act to collect and disburse backpay. Backpay is a remedy for the loss of employment or earnings by an individual called a “discriminatee” that results from an unfair labor practice. Backpay can include, among other things, lost wages, expenses related to lost wages, reimbursement of union dues, and interest on the amount of backpay owed. A charged party is generally referred to as a “respondent.”

The NLRB’s Casehandling Manual outlines the general procedures for administering the backpay remedy. Respondents may pay backpay by making a payment directly to the discriminatee and providing proof of payment to the Region; by providing the Region with a check made out to a discriminatee that is then delivered to the discriminatee by the Region; or by depositing the amount of backpay owed with the NLRB into a U.S. Department of Treasury (Treasury) account (backpay account), the funds of which are then disbursed by the NLRB to the individual discriminatees. When backpay funds are disbursed by the NLRB, the disbursement can be by check or by electronic funds transfer (EFT). Backpay that is not disbursed to a discriminatee is returned to the respondent.

Each Region has a Compliance Officer who is responsible for administering backpay disbursements. Backpay funds that are deposited into the backpay account are administered by the Finance Branch (Finance), Office of the Chief Financial Officer, through the use of the Backpay system. The Backpay system uses a database that includes information that identifies payees, whether a disbursement is by check or EFT, bank routing and account numbers, amounts of the disbursements and deposits, and the amounts paid as taxes.

Based upon the information in the Backpay system, between October 1, 2010 and September 30, 2015, the Agency disbursed from the backpay account a net amount of \$29,308,659.74 in backpay funds.

## **OBJECTIVE, SCOPE AND METHODOLOGY**

The audit objective was to determine whether the Agency disbursed, through an EFT, payments from the backpay account to any individuals who were not discriminatees in the case for which the backpay was collected.

The audit was initiated after the Office of Inspector General initiated an investigation of an alleged improper backpay disbursement in a particular Region. The scope of the audit was EFT backpay disbursements from the backpay account that occurred between October 1, 2010 and September 30, 2015. Backpay disbursements from the Region involved in the investigation of backpay were excluded from the scope.

We reviewed laws, regulations, and Agency policies related to backpay disbursements. We obtained the database of backpay disbursements. We selected a statistically valid random sample of disbursements to determine whether the database was reliable. Using generally accepted sampling criteria, a 90 percent confidence rate resulted in a sample size of 78 disbursements. The 90 percent confidence level is consistent with Government Accountability Office guidance and our expected deviation rate. The results of our test can be projected to the population of backpay disbursements.

We reviewed supporting documentation for each payee's bank account listed in the Backpay database to determine whether the bank account information was reliable. To identify potentially fraudulent backpay disbursements, we performed a series of analytical tests of the data in the database; we compared the bank account information in the database to the bank account information in the Agency's payroll records for the individuals involved in processing backpay disbursements; and we verified that each individual listed as a discriminatee with bank account information in the database or who was coded as receiving an EFT was an actual discriminatee. We compared the bank account data listed in the Backpay database to bank account data from Treasury.

Additionally, for all cases with disbursements to a payee with a bank account number in the Backpay database, we reviewed the disbursements and available case records to reconcile the backpay disbursements and deposits.

We conducted this performance audit in accordance with generally accepted government auditing standards during the period October 2015 through April 2017. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

## **FINDINGS**

With the exception of returning backpay funds to respondents, our testing did not disclose any instance that the Agency disbursed, through an EFT, payments from the backpay account to any individuals who were not discriminatees.

We observed that the Backpay system did not maintain records of changes to database information. As a result, we determined that the backpay database was not reliable. Therefore, our testing would not disclose any instances of improper backpay payments to an account number that was deleted from the Backpay system's database or if a payment was deleted.

Our testing to compensate for the lack of database reliability did not disclose any instance of an improper EFT backpay disbursement.

Additionally, we observed various discrepancies in the backpay process. We will initiate an audit to review the internal controls in the backpay process to determine if corrective action is necessary.

### ***Backpay Database Accuracy***

We reviewed supporting documentation for a random sample of 78 disbursements to determine if certain fields in the Backpay system's database were accurate. The results of that testing can be found below:

<b>Database Field</b>	<b>Yes</b>	<b>No</b>	<b>Incomplete</b>	<b>Lacks Documentation</b>
Correct Name	97.44%	0.00%	0.00%	2.56%
Correct Taxpayer ID Number	93.59%	2.56%	0.00%	3.85%
Correct Amount	96.15%	0.00%	0.00%	3.85%
Correct Address	89.74%	2.56%	5.13%	2.56%
Correct City	94.87%	1.28%	1.28%	2.56%
Correct State	94.87%	1.28%	1.28%	2.56%
Correct ZIP Code	88.46%	5.13%	3.85%	2.56%
Correct Payment Method	93.59%	2.56%	0.00%	3.85%

We considered a record incomplete if the record was currently accurate, but we could not verify that the information was accurate for the payment at the time of the disbursement.

We found that 2 of the 8 fields tested (Address and ZIP Code) had an error rate of greater than 10 percent. If an error rate is below 10 percent we made the determination that the data for that field was accurate and can be relied upon. Because the error rate is above 10 percent for the Address and ZIP Code fields, we determined that the information in those fields is not accurate and cannot be relied upon.

### ***Backpay Database Reliability***

We observed that the Backpay system did not document changes to payee information. For example, we observed that when a change was made to the address information for a payee, the prior address information was completely removed from the database. As a result of this observation, we determined that the information in the database, including bank account information, was not reliable.

We developed compensating tests to address the reliability of bank account information in the Backpay database. We obtained a list of the NLRB's EFT disbursements from Treasury. We then compared that list to the 1,224 disbursement records in the Backpay database that were coded as "EFT" or had bank account information associated with the record.

Our testing found that the bank account information for 1,019 of the 1,224 disbursement records in the Backpay

system matched the EFT Treasury disbursement information.

For the remaining 205 disbursements that were coded as EFT or had the payee's bank account information in the Backpay database and did not match the EFT Treasury disbursement list, we manually reviewed the Treasury reports in Finance's files to determine how the payment was made. Based upon that process, we determined that 197 of these disbursements were made by check. We also found that four disbursements were made to a discriminatee who changed bank accounts and two disbursements were paid by an international wire that was processed outside of Treasury's EFT system.

For the remaining two disbursements coded as EFT or that had the payee's bank account information in the Backpay database, but did not match the EFT Treasury disbursement information and did not have documentation of a payment in the Finance files, we observed the following:

- The Region's case file documented that the discriminatee was to receive installment backpay payments;
- The Finance file had documentation to support all but the two payments in question;
- The Region's case file had documentation that the discriminatee acknowledged receiving backpay payments by check;
- After receiving the check disbursements, the discriminatee requested that the remaining payments be processed as EFT disbursements;
- There were records of two EFT disbursements in the Treasury data that matched the Backpay system's records for two disbursements to the discriminatee; and

- Other than the two EFT disbursements to the discriminatee, there were no disbursements in the Treasury records of an EFT payment in the amount that matched the two remaining disbursements.

Based upon this information, we determined that the remaining two disbursements coded as EFT or that had the payee's bank account information in the Backpay database, but did not match the EFT Treasury disbursement information and did not have documentation of payment in the Finance files were two check disbursements of backpay to the discriminatee.

### *Recommendation*

In December 2016, we verified that, as a result of the implementation of what management characterized as a new system by the Office of the Chief Information Officer, the Backpay system now maintains a historical record of the payee data for each backpay disbursement. Because this issue appears to be corrected by the new "Backpay Management System", we are not making a recommendation.

### **Verification of Recipients**

We also verified that the disbursement records that were coded as an EFT or had a bank account number listed in the database were identified by a valid discriminatee or respondent. The verification was completed by comparing the name listed as a payee in the Backpay database to names in case-related documents such as a settlement agreement, an Administrative Law Judge decision, or a Board decision. We found that all of the 1,224 disbursement records were made to a discriminatee or respondent listed in a case-related document.

### **Bank Account Information**

Because of the small number of bank accounts listed in the Backpay system's database, we determined that statistical sampling would not be a reliable method of testing the authenticity of that bank account information.

For 31 of the 32 bank accounts listed in the database, we reviewed the discriminatee or respondent account information listed in the database and the account

information in case-related documents. One bank account was excluded from our testing because it was for an international wire that was not completely processed in the Backpay system. The results of this testing can be found below:

<b>Database Field</b>	<b>Yes</b>	<b>No</b>	<b>Lacks Documentation</b>
Correct Bank Account	30	0	1
	96.77%	0.00%	3.23%
Correct Routing Number	29	0	2
	93.55%	0.00%	6.45%

In one instance that lacked bank account documentation, the case-related documents corroborate that the individual who received the backpay was an actual discriminatee.

### ***Analytical Testing***

We identified and tested nine situations that could be an indicator of a questionable transaction. Below are the results of our tests of disbursement records coded as an EFT or with the payee’s bank account information in the Backpay database:

<b>Test</b>	<b>Records Found</b>
Same Bank Account, Multiple Addresses	0
Same Bank Account, Multiple Case Numbers	0
Same Bank Account, Multiple Last Names	0
Same Bank Account, Multiple First Names	0
Same Bank Account, Multiple SSNs	0
Same SSN, Multiple Last Names	0
Same SSN, Multiple First Names	0
Same SSN, Multiple Addresses	0
Interest Only	0

### ***Bank Accounts of Employees Involved in Backpay Process***

The NLRB’s employee payroll system maintains both current and historical direct deposit bank account information. We obtained all of the direct deposit bank account numbers listed in the payroll system for Finance employees involved in the backpay payment process and each of the Regional Compliance Officers. We then compared each employee’s direct deposit information to the Backpay database to

determine whether there were backpay disbursements to any employee direct deposit bank accounts. We found that none of the employee direct deposit bank accounts matched the accounts listed in the database.

### ***Backpay Discrepancies***

We reviewed the disbursements and available case records to reconcile the backpay disbursements and deposits. We did not identify any discrepancies that could be an indicator of a fraudulent backpay disbursement. We did observe, however, a number of discrepancies among different cases including, but not limited to:

- A union trust fund did not receive all of the funds it was entitled to receive because of an error in preparing the disbursement memorandum. The Region thought that it disbursed all of the backpay funds, but due to the error in the disbursement memorandum, a balance of funds remained. The Region disbursed the remaining balance to the individual discriminatees without obtaining information on the cause of the remaining balance;
- Backpay funds were returned to a respondent when the settlement agreement stated that remaining funds would be disbursed to the discriminatees;
- Disbursements for two union funds from two checks that were not negotiated within 1 year were cancelled. The returned funds remained in the backpay account for more than 2 years. The funds were not disbursed again until after this audit was initiated;
- Taxes were mistakenly withheld from four installment payments. The Agency obtained a refund for the taxes withheld on one payment, but took no action for the three remaining payments. A refund was received after the discriminatee's final backpay payment. The refund remained in the backpay account for 9 months before it was disbursed after this audit was initiated;
- The methodology for determining the distribution of remaining backpay balances was not documented; and

- We observed a lack of documentation that Compliance Officers were verifying that respondents complied with financial terms of the settlement agreements.

### *Management Comment*

Management's comments state the following:

[T]he report should also state the deficiencies discovered during the audit are based on the old/decommissioned system and that a majority of these deficiencies have been addressed in the design and functionality of [Backpay Management System].

### *Inspector General Response*

Because the draft report stated that the database reliability finding was addressed by changes to the Backpay database, we are concerned that management's comments mischaracterize the audit report with regard to the discrepancies described above. We observed nothing in the new "Backpay Management System" that would prevent errors in calculating backpay amounts due; automatically re-disburse backpay funds that were returned; request reimbursement for improper withholding of taxes; document the method of distributing remaining backpay balances; or ensure that Compliance Officers verify that respondents do what they promised to do in settlement agreements. These types of errors would not result from the failures of an information technology system.

### *Recommendation*

Because our testing was not based upon a random sample of all backpay cases, we cannot determine if the discrepancies are the result of a lack of internal controls or the failure of managers to properly implement internal controls. Given the number and nature of discrepancies in a relatively small number of backpay cases, however, we determined that it is appropriate to initiate an audit to review the internal controls in the Backpay process and determine if corrective action is necessary.

## **APPENDIX**

**UNITED STATES GOVERNMENT  
National Labor Relations Board  
Division of Operations-Management  
Memorandum**



**Date:** May 11, 2017

**To:** David Berry  
Inspector General

**From:** Beth Tursell  
Associate to the General Counsel  
Division of Operations-Management

**Subject:** Backpay Payments  
Report No. OIG-AMR-79-XX-XX

I am pleased that the audit did not identify any discrepancies that could be an indicator of fraudulent backpay disbursements. I believe the report should clarify that it is referring to the old Backpay System and is not referring to the current Backpay Management System (BMS). Additionally, the report should also state the deficiencies discovered during the audit are based on the old/decommissioned system and that a majority of these deficiencies have been addressed in the design and functionality of BMS. I await the initiation of the next audit involving the internal controls in the backpay process in Regional offices.

  
B. T

**CC:** Phillip Miscimarra  
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